

REMARKS

Applicants gratefully acknowledge withdrawal of the prior rejection under 35 U.S.C. Section 101.

Claims 1-14, 17, 20-25, 29-31, 35 and 39-40 have been rejected for failing to comply with the written description requirement. In particular, it is alleged that the specification as filed does not provide a teaching of stain removing components not being mixed directly with the gum base. The rejection is hereby traversed and reconsideration is respectfully requested.

Claims 17 and 31 have been canceled as being drawn to a non-elected invention.

Claim 1 has been amended to remove the language which formed the basis of the rejection of the claims under 35 U.S.C. Section 112, first paragraph. Accordingly, all of the claims of the application except new claim 41 are free of the rejection under 35 U.S.C. Section 112.

New claim 41 provides that the stain removing components are not mixed directly with the gum base and therefore are not materially bound to the gum base. Support for this claim may be found in the paragraph at page 21, lines 6-17. In particular, this portion of the specification states that the stain removing agents can

be added as one of the last steps, preferably the last step in the formation of the chewing gum composition. It is well known in the art that various additives are added to the gum base in order to form the chewing gum composition. This is shown, for example, in Example 4, beginning on page 38. It will be noted that the chewing gum composition of Example 4 was prepared by conventional methods known in the art. The gum base was heated and the molten gum base and filler were then added to a mixing kettle. Thereafter, the sugar alcohols, glycerin, flavor, and high intensity sweetener were added. In accordance with the present invention, the stain removing agents were not directly added to the gum base as was the filler and certain of the additives. To the contrary, the stain removing agents in the example provided were preferably added last to the composition.

It is further noted beginning at page 21, line 11 that as a result of being added as one of the last steps, the stain removing agents do not materially bind to the gum base. Page 21, lines 13-15 makes it clear that the stain removing agents would bind to the gum base to a greater extent than if the stain removing agents were mixed directly with the gum base. As a result of avoiding mixing the stain removing agents directly with the gum base, the stain removing agents are only loosely contained within the gum composition and can be more effectively released therefrom. Thus, page 21, lines 6-17 clearly support the language that is employed in new claim 41. Entry of the new claim 41 is therefore deemed proper and is respectfully requested.

Claims 1-9, 11-14, 17, 20-25, 29-33, 35, 37 and 38 stand rejected as anticipated [35 U.S.C. Section 102(e)] by U.S. Patent Published Application No. 2003/0072841.

In response to this rejection, Applicants enclose herewith the duly executed Declaration of Samantha K. Holme, the lead inventor of the present application, showing reduction to practice of the claimed invention prior to the effective date of the U.S. Patent Publication reference. The Declarant presents evidence sufficient under 37 C.F.R. § 1.131 to remove the reference as prior art and therefore from consideration of the patentability of the claims of the present application.

The present application (Serial No. 10/719,602) was filed on November 21, 2003. U.S. Patent Publication No. 2003/0072841 (published on April 17, 2003) was filed on February 28, 2002 based on U.S. Provisional Application No. 60/276,975 and U.S. Provisional Application No. 60/276,978 filed on March 19, 2001.

35 U.S.C. Section 102(e) qualifies the U.S. Patent Publication as prior art if it can be shown that Applicants' invention was described in the published application filed in the United States before the invention by the Applicants. The earliest effective filing date of the U.S. Patent Publication is March 19, 2001 (i.e. the filing dates of the above-identified provisional applications).

Pursuant to 37 C.F.R. Section 1.131, Applicants may establish by Affidavit or Declaration a prior date of invention within a year of the effective date of the U.S. Patent Publication reference.

Pursuant to 37 C.F.R. Section 1.131(b), the showing of facts to establish an earlier date of invention shall be sufficient in character and weight to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence. Original exhibits of drawings or records or photocopies thereof, must accompany and form part of the Declaration unless otherwise explained.

To establish a date of invention earlier than the U.S. Patent Publication and particularly prior to March 19, 2001, Applicants submit herewith the duly executed Declaration of Samantha K. Holme, the first named inventor of the subject matter of the present invention. The Declarant introduces a document entitled "Batch Sheets for the year 2000" which are listings of particular experiments (i.e. Batch Sheet Listings) that were performed in the Warner Lambert Company (predecessor of Cadbury Adams USA LLC) chewing gum lab.

Certain of the Batch Sheet Listings include information relevant to the identification of experiments showing a reduction to practice of the present invention. The relevant Batch Sheet Listings are matched with corresponding Batch Sheets

showing the actual ingredients used to form the chewing gum composition and the method by which the chewing gum composition was formed.

Beginning with paragraph 6 of the Declaration, Batch Sheet Listing Nos. 3-0300, 0-0321 and 0-0322 are the focus of chewing gum compositions containing two stain removing agents selected from sodium stearate (an example of an anionic surfactant), sodium tripolyphosphate (an example of a polyphosphate) and carbamide peroxide (an example of a peroxide compound). The Batch Sheet Listings and the corresponding Batch Sheets show that the experiments were conducted on August 18 and August 30, 2000, respectively (well prior to March 19, 2001).

Each of the Batch Sheets identified above also shows that the chewing gum compositions were prepared by a method in which the stain removing agents were not mixed directly with the gum base but instead, were added as one of the last steps of producing the chewing gum composition.

Beginning with paragraph 12 of the Declaration, each of the chewing gum formulations corresponding to Batch Sheet Listing Nos. 0-0300, 0-0321 and 0-0322 were tested to determine their ability to remove stains from bovine teeth over the course of a simulated seven days of chewing and were found to exhibit excellent stain removing properties.

All of the work performed in connection with these experiments establish reduction to practice of the invention well before March 19, 2001. The documentation provided to support the experimental work is sufficient not only to establish that the experiments were performed prior to the effective date of the reference publication but also to establish that utility as an improved stain removing formulation was achieved prior to the effective date of the reference publication.

Applicants are cognizant that the information presented in the Holme Declaration is not the only information that was generated at the time the experiments were conducted. Paragraph 15 of the Declaration provides reasons why other materials were not provided because they were either lost during the transition from Warner Lambert Company to Pfizer to Cadbury Adams USA LLC or were lost as a result of water damage in a facility in which they were being stored.

As Applicants have shown through the Declaration of Samantha K. Holme, the date of invention to which Applicants are entitled clearly antedates the earliest effective date of the sole reference cited against the present claims. Accordingly, the U.S. Patent Publication is not prior art with respect to the present invention under 35 U.S.C. Section 102(e) or any other prior art section. There being no other rejections of the claims on prior art grounds, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,



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